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United States General Accounting Office
Washington, DC 20548

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July 3, 2003

The Honorable Richard C. Shelby
Chairman
The Honorable Paul S. Sarbanes
Ranking Minority Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Michael G. Oxley
Chairman
The Honorable Barney Frank
Ranking Minority Member
Committee on Financial Services
House of Representatives

Subject: *Securities and Exchange Commission: Certain Research and Development Companies*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Securities and Exchange Commission (Commission), entitled "Certain Research and Development Companies" (RIN: 3235-AI57). We received the rule on June 17, 2003. It was published in the Federal Register as a final rule on June 20, 2003. 68 Fed. Reg. 37046.

The final rule under the Investment Company Act of 1940 provides a nonexclusive safe harbor from the definition of investment company for certain bona fide research and development companies (R&D companies). The rule allows R&D companies greater flexibility to raise and invest capital pending its use in research, development, and other operations and clarifies the extent to which a company relying on the rule may make investments in other companies pursuant to collaborative research and development arrangements.

Enclosed is our assessment of the Commission's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the Commission complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Thomas McCool, Managing Director, Financial Markets and Community Investment. Mr. McCool can be reached at (202) 512-8678.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosures

cc: Jill M. Peterson
Assistant Secretary
Securities and Exchange
Commission

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
SECURITIES AND EXCHANGE COMMISSION
ENTITLED
"CERTAIN RESEARCH AND DEVELOPMENT COMPANIES"
(RIN: 3235-AI57)

(i) Cost-benefit analysis

The SEC estimates that if 500 companies rely on the rule, the cost would be \$103,750 based on one hour per company at a blended hourly rate. The benefits of the rule include allowing R&D companies to raise large amounts of capital in a more cost-effective manner and to formulate more efficient asset allocations than is permitted under existing tests.

If just 5 of the estimated 500 companies take advantage of the rule and raise an additional \$20 million, the total effect on the economy will be \$100 million.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The SEC prepared an Initial Regulatory Flexibility Analysis in connection with the proposed rule and a Final Regulatory Flexibility Analysis is summarized in the preamble to the final rule. The analysis concludes that although the rule could affect small entities, it is less burdensome than the prior alternative and therefore should minimize any impact upon, or cost to, small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the SEC is not subject to title II of the Unfunded Mandates Reform Act of 1995.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The final rule was issued using the notice and comment procedures found at 5 U.S.C. 553. On December 3, 2002, the SEC published a Notice of Proposed Rulemaking in the Federal Register. 67 Fed. Reg. 71915. The SEC received six comments in response to the proposed rule and discusses the comments in the preamble to the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Review Act. OMB has approved the information collection and assigned OMB control number 3235-0574, which expires March 31, 2006.

Statutory authorization for the rule

The final rule is promulgated under the authority contained in section 6(c) and 38(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-6(c) and 80a-38(a)).

Executive Order No. 12866

As the rule is promulgated by an independent regulatory agency, it is not subject to the review requirements of the order.